IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

AS.No. 570 of 1993(C)

OS.753/1991 of II ADDL.SUB COURT,ERNAKULAM

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APPELLANT/PLAINTIFF:

(*)K.C.GEORGE, AGED 70 YEARS, S/O.K.C.CHACKO, 28/7 SANTHI NAGAR, KALAMASSERY.(DIED. LRS IMPLEADED)

ADDL.APPELLANTS 2 TO 4:

2. SUSAN GEORGE, W/O.LATE K.C.GEORGE,A.28, SANTHI NAGAR, SOUTH KALAMASSERY.

3. SANTHOSH GEORGE, S/O.LATE K.C.GEORGE, -DO- -DO-

4. GEORGE GEORGE, -DO- -DO- -DO-

(*)LRS OF DECEASED SOLE APPELLANT IMPLEADED AS ADDITIONAL APPELLANTS 2 TO 4 AS PER ORDER DATED 31.7.2007 ON IA NO.2685/2007.

BY ADV. SRI.K.P.SREEKUMAR

RESPONDENT/RESPONDENT:

THE GREATER COCHIN DEVELOPMENT AUTHORITY, REP. BY THEKKUMMURI SECRETARY, COCHIN 20.

BY ADV. SRI.M.V.JOSEPH

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

A.S.No.570 of 1993

Dated, this the 6th day of September, 2007

JUDGMENT

This appeal is filed by the deceased original plaintiff in O.S.No.753/1991 on the file of the II Additional Sub Court, Ernakulam. During the pendency of this appeal the original plaintiff died and his legal representatives are impleaded as addtional appellants. Appeal arises from a decree and judgment passed by the court below dismissing the suit filed by the appellant for a decree of permanent prohibitory injunction restraining the respondent from recovering any additional amount from the appellants. The suit filed by the appellant and three other suits were consolidated and jointly tried. All the three suits were dismissed. The plaintiff was an allottee of plots owned by the respondent Greater Cochin Development Authority in Kaloor Town Planning Scheme. Respondent requested the Government to acquire the property by invoking the provisions of the Land Acquisition Act. Plots belonging to various persons were acquired and after making them developed house plots the defendant offered the same for sale by tender. Plaintiff was the successful bidder of plot No.7 having an extent of 8.945 cents. He purchased the property for a price of Rs.8,700/- per cent. Total bid amount was Rs.77,821.50 ps. Amount was paid and plot was allotted to him. Sale was confirmed. Subsequently the plaintiff was asked to remit additional

land value at the rate of Rs.7,367/- per cent. Challenging that demand the plaintiff filed the suit for a permanent prohibitory injunction.

2. The main contention raised was that the provisions of amended Land Acquisition Act have no retrospective operation and the land involved in this case was acquired long prior to the commencement of the amendment Act and there was no question of paying any enhanced compensation or additional land value. It was averred that owner of the land purchased by the plaintiff never made any claim for enhancement and so that the defendant did not incur any additional land value in respect of the plot allotted to the plaintiff. It was also averred that the purchase price paid by the plaintiff was inclusive of all kinds of developmental charges and defendant was not entitled to claim any further amount on that count. In short the contention raised was that the land allotted to the plaintiff was acquired from a particular person and he was paid compensation and that amount was taken into account while fixing the sale price and since the plaintiff paid the entire amount and the defendant did not pay any additional land value in respect of the 8.945 cents allotted to the plaintiff, he is not liable to pay any additional compensation.

3. Defendant filed separate written statements in all the four suits. The contention that the market value of the property allotted to the plaintiffs in all the suits at the time of acquisition was only Rs.1,000/- per cent was denied. It was contended that the defendant spent huge amount of money for the

development of the plots acquired and without any profits the plots were auctioned. It was also contended that the land owners moved the court for higher compensation and due to the heavy financial burden the defendant got sanction to realise uniform excess price from all allottees. It was contended that the land was sold subject to such a condition and all the allottees had agreed to the terms and conditions and accordingly the plaintiffs in all the suits were liable to pay additional land value which the defendant had to pay to the land owners. So the contention raised was that even if the owner of the land allotted to the plaintiff in this case did not claim any enhancement, if any additional land value was paid for any portion of land acquired for a particular scheme is to be uniformly shared by all the allottees and not by the person who actually purchased that plot in respect of which the defendant had to pay additional land value. Trial court after trial found that every allottee was bound to remit additional charge and dismissed the suit for injunction. Challenging that judgment and decree this appeal is filed.

4. Trial court relied on Exts.A1, B1 and B2 to hold that all the allottees of a particular scheme had agreed that in respect of any additional land value the Greater Cochin Development Authority had to pay will be equally met by all the allottees. As rightly observed by the court below the plaintiff had no case that he was forced to sign the sale deed. Trial Court had observed that in the sale deed it was specifically stated that the vendee as well as the schedule property are liable to make good the excess if any owing to any increase in miscellaneous and

development charges as well as the excess if any payable under the land acquisition award since the final cost of the work and amenities have not been finally assessed and the compensation proceedings in respect of acquisition of the lands have not been finally disposed of. There is no covenant between the plaintiff and defendant to the effect that the plaintiff need pay the enhanced land value only in case the defendant had to pay additional compensation to the owner of the land allotted to him. In other words there is no agreement between the the plaintiff and defendant to the effect that if the former owner of the land which was allotted to the plaintiff did not make any claim he need not pay any excess amount. So going by the terms of the documents it is clear that all the allottees had agreed to contribute equally in respect of any additional charges which the defendant had to incur. In view of this agreement the plaintiff cannot be now turned round and contend that he need pay additional amount only in case the former owner of the land allotted to him makes any claim for additional compensation in respect of that particular plot. So the reasoning of the trial court is perfectly correct. I do not find any reason to interfere with the decree and judgment passed by the court below. So the appeal is only to be dismissed.

5. The learned counsel appearing for the appellants submits that the respondent/defendant had claimed a huge amount by way of interest. In **Central Bank of India v. Ravindra (AIR 2001 SC 3095)** a Constitution Bench of the Supreme Court had occasion to consider the question of interest payable under a

decree passed by the court. Though there is no decree passed allowing the respondent to recover the amount with interest it is only just and proper that the respondent considers why the principles laid down by the Supreme Court in Central Bank of India's case (supra) shall not apply in this case also if the appellants make a request for scaling down the interest. It is open to the appellants to approach the respondent Greater Cochin Development Authority and file an application claiming concession regarding the rate of interest. Appellant shall file the application within two weeks from the date of receipt of a copy of this judgment. If such an application is received, the respondent shall consider the same in accordance with law and quantify the amount due from the appellants within another six weeks from the date of receipt of application. Until the amount is quantified, no coercive steps shall be initiated against the appellants.

C.M.P.No.3352/1993 will stand dismissed.

K. PADMANABHAN NAIR
JUDGE

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K.PADMANABHAN NAIR, J.

A.S.No.570 of 1993

JUDGMENT

6th September, 2007.